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REMARKS

Claims 44, 46, 52, 54, 58, 59, and 64 are amended and claim 82 is added herein. Claims 44-82 will be pending upon entry of this amendment.

Claims 46, 52, 54, 58, 59, and 64 have been amended herein to improve the form of these claims and not for reasons related to patentability.

The following remarks are responsive to the Office action dated January 27, 2005.

Response to Objections to the Specification

The specification is amended herein to change all references to the term "Coform" to read as "coform". The amendment clarifies applicants' intended use of "coform" throughout the specification to generically refer to a composite material comprising a mixture or stabilized matrix of thermoplastic fibers and a second non-thermoplastic material. This term is well known to those skilled in the art of absorbent products. For example, please see European Patent Application No. 0 687 453 (Lassen et al.) at column 13, lines 22-24, which indicates that coform is an air-formed combination of melt-blown polymers and cellulose.

As a result, applicants submit that the specification as now presented is in proper form.

Response to Claim Rejections

Claim 44

Amended claim 44 is directed to an absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of the article and

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adapted for absorbing liquid body waste released by the wearer. The absorbent body has a longitudinal axis, a lateral axis, and at least one fold line formed therein defining at least two segments of the absorbent body. The at least one fold line extends at least in part laterally of the absorbent body. The segments are generally foldable relative to each other along the at least one fold line to facilitate conformance of the absorbent article to the wearer's body.

Claim 44 as amended is submitted to be unanticipated by and patentable over the references of record, and in particular European Patent Application No. 0 687 453 (Lassen et al.), in that the references fail to show or suggest at least one fold line extending at least in part laterally of the absorbent body.

As shown in Figs. 2 and 9, Lassen et al. disclose a sanitary napkin 10, 100 having a liquid pervious cover 12, a liquid impervious baffle 14, 114, and an absorbent core 18, 118 disposed between the cover and baffle. The absorbent core 18, 118 has a flexure axis 24, 124 that is coaxial with a longitudinal center line Y-Y of the sanitary napkin 10, 100. The centrally located, longitudinally extending flexure axis 24, 124 allows the sanitary napkin 10, 100 to deform into an inverted "V", "W", or "A" shape when a lateral compressive force is exerted on it. Indeed, in every embodiment of Lassen et al. the flexure axis is coaxial with or parallel to the longitudinal axis of the absorbent core.

Lassen et al. therefore fail to disclose or suggest an absorbent body having at least one fold line extending at least in part laterally of the absorbent body as recited in amended claim 44. In fact, Lassen et al. teaches away from such an arrangement. As indicated in column 6, lines 42-52, the

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central, longitudinal flexure axis 24 directs fluid flow along the length of the absorbent core 18, which has a greater absorbent capacity, thereby reducing the likelihood of fluid flow in a transverse direction (i.e., in the direction along X-X). Lassen et al. teach that fluid flow in the transverse direction should be minimized to prevent potential leakage of fluid through a side of the article and that positioning the flexure axis 24 in a transverse direction would increase the potential for leakage. Thus, Lassen et al. fail to teach an absorbent body having a fold line that at least in part extends laterally of the absorbent body.

The present invention, on the other hand, as recited in amended claim 44 includes a fold line that extends at least in part in a lateral direction. As shown in Figs. 1, 4, 5, 6, 7 and 10, the various exemplary embodiments of the present invention all include fold lines 15 with a lateral component. In other words, each of the exemplary embodiments includes a fold line that extends parallel to or coaxial with the lateral axis of the absorbent body, or extends other than parallel to the longitudinal axis of the absorbent so as to have a lateral component (e.g. vector).

For the above reasons, claim 44 is submitted to be unanticipated by and patentable over the references of record. Claims 45-73 depend directly or indirectly from claim 44 and are submitted to be unanticipated by and patentable over Lassen et al. for the same reasons as claim 44.

Claim 50

Claim 50 depends indirectly from claim 44 and further recites that the at least two layers of the absorbent body include an inner layer and an outer layer, the inner layer being

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nearer the wearer's body than the outer layer upon wearing of the absorbent article by the wearer, the inner layer having at least one of a length and a width substantially smaller than that of the outer layer.

Claim 50 stands rejected in view Lassen et al. on the assertion that it would have been obvious to one skilled in the art to construct the inner layer with less than seventy-five percent of the surface area of the outer layer since it is well known that these ranges will enhance absorbent performance and minimize layer occlusion and leakage as specified. Page 4, paragraph 2 of the Office action. Applicants respectfully disagree and request citation of a reference showing or suggesting the particularly claimed percentage of the inner layer surface area to outer layer surface area.

Claim 71

Claim 71, which depends indirectly from claim 44, further recites that the at least one layer of the absorbent body is adapted to be differentiated visually from the remaining layers thereof. The Office has rejected claim 71 as being obvious in view of the combination of Lassen et al. and U.S. Patent No. 4,798,603 (Meyer et al.) in that the transport layer disclosed in Meyer et al. "could obviously be altered to be visually recognized from the other layers including different coloring since no functional benefit is specified." Page 6, fourth full paragraph.

In its rejection of claim 71, the Office has improperly attempted to shift the burden of proving non-obviousness to the applicant. The burden is on the Office to establish prima facie obviousness. In order to establish a prima facie case of obviousness based on a combination of prior art references under

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§103(a), the Office must set forth some suggestion or motivation to combine the teachings of the prior art references, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art at the time of the invention.¹ With regard to the Office's rejection of claim 71, the Office has failed to assert any reasons whatsoever why one of ordinary skill in the art would be motivated to provide an absorbent article with an absorbent body having fold lines and comprised of multiple layers with at least one of the layers being differentiated visually from the remaining layers thereof.

For these additional reasons, claim 71 is further submitted to be patentable over the references of record.

Claim 74

Claim 74 is directed to a method of producing an absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of said article and adapted for absorbing liquid body waste released by the wearer. The method comprises the steps of:

passing a first cut-out from a first web material through a nip;

passing a second web material through the nip whereby the cut-out from the first web material overlays the second web material as the cut-out and the second web material pass through the nip; and

performing one of the following as the cut-out from the first web material and the second material together pass through the nip: forming a fold line in the second web material at the peripheral edge of the cut-out of the first web material and

¹ M.P.E.P. §706.02(j).

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forming a second cut-out from the second web material having substantially the same shape as the first cut-out from the first web material.

Claim 74 stands rejected as being a product-by-process claim. See page 7, first full paragraph of the Office action. However, claim 74 is clearly a **process claim** and not a product-by-process claim as asserted by the Examiner. A product-by-process claim is a claim "in which the product is defined at least in part in terms of the method or process by which it is made."² *Emphasis added.* See also M.P.E.P. §2173.05(p) (a product-by-process claim is "a product claim that defines the product in terms of the process by which it is made.") A process, on the other hand, "is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing."³ Claim 74 is clearly not claiming a product but instead claims a method for producing a product.

Since claim 74 is a process claim and not a product-by-process, applicants respectfully request withdrawal of the rejection of claim 74 and claims 75-81, which depend from claim 74. In the event the Office maintains its position with respect to claim 74, applicants respectfully request a more detailed

² Donald S. Chisum, Chisum on Patents, Vol. 3, Matthew Bender & Co. 8-145 (2003) citing *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 9 USPQ2d 1847, 1855 (1989).

³ Donald S. Chisum, Chisum on Patents, Vol. 1, Matthew Bender & Co. 1-81 (2003) quoting *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1877).

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reasoning as to why the Office considers claim 74 to be a product-by-process claim.

Claim 82

New claim 82 is directed to an absorbent body for an absorbent article of the type worn by a wearer and having an absorbent body disposed generally centrally of the article and adapted for absorbing liquid body waste released by the wearer. The absorbent body has a plurality of fold lines formed therein and defining more than two segments of said absorbent body, said segments being generally foldable relative to each other along said fold lines to facilitate conformance of the absorbent article to the wearer's body, at least one fold line of said plurality of fold lines extending at least in part laterally of said absorbent body, and at least one other of said plurality of fold lines extending at least in part longitudinally of said absorbent body.

New claim 82 is submitted to be patentable over the references of record, and including Lassen et al. for at least the same reasons as set forth above with respect to claim 44. That is the references fail to show or suggest at least one fold line extending at least in part laterally of the absorbent body.

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CONCLUSION

In view of the above, applicants respectfully request favorable consideration and allowance of claims 44-82.

Respectfully submitted,



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